

AMENDED IN SENATE JULY 1, 2003

AMENDED IN SENATE JUNE 18, 2003

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1367**

**Introduced by Assembly Member Laird**

February 21, 2003

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An act to add Section 25150.9 to the Health and Safety Code, and to amend Section 13173 of the Water Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1367, as amended, Laird. Waste: regulation.

(1) Existing law establishes various standards for management and control of hazardous waste. Existing law authorizes the Department of Toxic Substances Control to adopt standards and regulations for the management of hazardous waste, as specified.

This bill would authorize the department to adopt alternative waste management standards by regulation, for waste management activities that meet specified criteria. The bill would require the department to make specified findings and analysis, and to make that analysis available to the public, when it gives notice that it proposes to adopt those regulations and before adopting those regulations.

The bill would provide that the department's authority to adopt regulations pursuant to the bill's provisions shall remain in effect only until January 1, 2007, unless a later enacted statute deletes or extends that date. However, the bill would also provide that this would not

invalidate any regulation adopted pursuant to the bill's authority before that date.

Since a violation of the regulations authorized by this bill would be a crime, the bill would impose a state-mandated local program.

(2) The Porter-Cologne Water Quality Control Act defines the term "designated waste" and authorizes the State Water Resources Control Board to adopt policies with regard to designated waste.

This bill would revise the definition of designated waste to include waste disposed pursuant to the alternative waste management regulations adopted in accordance with the bill.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 25150.9 is added to the Health and  
2 Safety Code, to read:

3 25150.9. (a) (1) Subject to the requirements of this section,  
4 the department may, by regulation, establish waste management  
5 standards as an alternative to one or more of the standards specified  
6 in this chapter, for specified activities that do not involve the  
7 management of any waste other than the wastes identified in  
8 paragraph (4).

9 (2) The rulemaking file for any regulation adopted pursuant to  
10 paragraph (1) shall ~~specify~~ *identify* the standard or standards of this  
11 chapter for which the regulation provides alternative standards.  
12 Any person subject to the ~~alternative identified~~ standard or  
13 standards *of this chapter* shall comply with either the alternative  
14 standard or standards specified in the department's regulations or  
15 the standard or standards specified in this chapter. In either case,  
16 that person is deemed, *and shall be considered by the department*  
17 *and any other entity authorized to enforce this chapter and the*  
18 *regulations adopted pursuant to this chapter*, to be in compliance

1 with the standard or standards of this chapter for which the  
2 regulation is ~~specified~~ *identified* as being an alternative.

3 (3) (A) During the development of a regulation proposed to be  
4 adopted pursuant to this section that affects a waste that is  
5 proposed to be, or is currently, disposed of in a solid waste facility,  
6 the department shall consult with the California Integrated Waste  
7 Management Board, the State Water Resources Control Board,  
8 and any other appropriate governmental agency.

9 ~~(B) If the department adopts a regulation pursuant to this~~  
10 ~~section for a waste that is required under this chapter, to be~~  
11 ~~disposed of in a class I hazardous waste disposal facility, and that~~  
12 ~~regulation allows that waste to be disposed of in a solid waste~~  
13 ~~landfill, the disposal of that waste in a solid waste landfill in~~  
14 ~~accordance with that regulation shall be performed as if the waste~~  
15 ~~were a designated waste, as defined in Section 13173 of the Water~~  
16 ~~Code.~~

17 *(B) In the case of a waste that is required under this chapter to*  
18 *be disposed of in a class I hazardous waste disposal facility, if the*  
19 *department adopts a regulation pursuant to this section that allows*  
20 *that waste to be disposed of in a solid waste landfill, that waste,*  
21 *when disposed of in a solid waste landfill in accordance with that*  
22 *regulation, shall be disposed of as if the waste were a designated*  
23 *waste, as defined in Section 13173 of the Water Code.*

24 (4) This section applies only to the following wastes:

25 (A) Hazardous waste that substantially meets the criteria for  
26 universal wastes listed in Section 273.81 of Title 40 of the Code  
27 of Federal Regulations, and that is regulated as universal waste in  
28 the regulations adopted pursuant to this subdivision.

29 (B) Any other waste that meets one or more of the following  
30 criteria:

31 (i) The waste is generated by numerous households.

32 (ii) The waste is a hazardous waste that is generated at  
33 numerous locations where prolonged accumulation of the  
34 hazardous waste, under the requirements of this chapter and the  
35 regulations adopted by the department governing accumulation  
36 and storage of hazardous waste, presents greater than normal  
37 public health or environmental risks. This type of location  
38 includes, but is not limited to, elementary and secondary  
39 schoolsites, day care centers, and nonhospital facilities that  
40 provide day care or residential care for the elderly or the physically

1 or mentally impaired. This type of location also includes small  
2 government buildings frequented by numerous members of the  
3 public where it may not be reasonably feasible to manage  
4 hazardous waste in accordance with the requirements of this  
5 chapter and the regulations adopted by the department governing  
6 accumulation of hazardous waste.

7 (iii) The waste is generated by a wide variety of types of  
8 establishments, including, but not limited to, households, retail  
9 and commercial businesses, office complexes, small businesses,  
10 government organizations, and large industrial facilities.

11 (iv) The waste is a material that is being or has been phased out  
12 of common use because the use of the material presents  
13 unacceptable risks to public health or safety or the environment.

14 (v) ~~The~~ *A waste for which the* department determines that, due  
15 to the unique characteristics of the waste or the circumstances  
16 surrounding its generation or subsequent management, an  
17 alternative standard *or standards* may be more appropriate *or*  
18 *workable* for the management of that waste than one or more of the  
19 requirements of this chapter.

20 (5) The department may not adopt regulations pursuant to this  
21 section that establish alternative standards for the requirements of  
22 this chapter that concern the disposal of waste that, on January 1,  
23 2004, is required to be disposed of in a class I hazardous waste  
24 disposal facility under this chapter, unless all of the following  
25 apply:

26 (A) The waste meets one of the following criteria:

27 (i) The waste is household hazardous waste, as defined in  
28 Section 25218.1, or, in the case of a nonhazardous waste, the waste  
29 would be household hazardous waste if it met the definition of  
30 hazardous waste.

31 (ii) The waste is generated by the abatement of human health  
32 hazards present in residential buildings *that are being*  
33 *rehabilitated, or otherwise repaired or maintained, for continued*  
34 *or future residential habitation. This clause does not apply to waste*  
35 *generated by the demolition of residential buildings for any*  
36 *purpose.*

37 (iii) The waste is generated by an elementary or secondary  
38 schoolsite or a state or local government agency or district, and the  
39 waste is being removed from service in an area accessible to the  
40 public because it presents an imminent or substantial

1 endangerment to public health, as determined by the department  
2 in the rulemaking record. This clause does not apply to liquid  
3 waste generated in school laboratories.

4 (iv) The waste is a hazardous waste and is classified as a special  
5 waste in accordance with Section 66261.122 of Title 22 of the  
6 California Code of Regulations.

7 (B) The waste is a material other than soil. This subparagraph  
8 does not apply to nonsoil waste containing de minimus amounts  
9 of soil, or waste soil meeting the criteria in clause (i) of  
10 subparagraph (A).

11 (C) The department determines and demonstrates in the  
12 analysis required pursuant to paragraph (1) of subdivision (b) that  
13 there is no readily available technology for recycling the waste. If  
14 the department determines that a recycling technology is available,  
15 but that an adequate collection and recycling infrastructure does  
16 not yet exist, the department may adopt regulations that establish  
17 alternative disposal standards for a limited period of time that is  
18 sufficient to allow the establishment of that infrastructure.

19 (b) Before adopting a regulation pursuant to subdivision (a),  
20 the department shall do all of the following:

21 (1) Prepare an analysis, pursuant to subdivision (c), of the  
22 waste management activity to which the alternative management  
23 standards will apply. The department shall first prepare the  
24 analysis as a preliminary analysis and make it available to the  
25 public at the same time that the department gives notice, pursuant  
26 to Section 11346.4 of the Government Code, that it proposes to  
27 adopt a regulation pursuant to this section establishing waste  
28 management standards as an alternative to one or more of the  
29 requirements of this chapter. The department shall include, in the  
30 notice, a reference that the department has prepared and  
31 incorporated in the rulemaking file a preliminary analysis and a  
32 statement concerning where a copy of the preliminary analysis can  
33 be obtained. The information in the preliminary analysis shall be  
34 updated and the department shall make the analysis available to the  
35 public as a final analysis not less than 10 working days prior to the  
36 date that the department adopts the regulation. For purposes of  
37 complying with the notification requirements of this paragraph,  
38 the department shall establish a list of interested parties and shall  
39 provide the required notice to all parties on the list. The department

1 shall use the best available technology to establish a list that  
2 includes as many known, interested parties as possible.

3 (2) Make, and incorporate in the rulemaking file, the findings  
4 and demonstrations required by subdivision (d).

5 (3) Impose, as may be necessary, conditions and limitations on  
6 the application of the alternative management standards that  
7 ensure that the affected activity will not pose a significant potential  
8 hazard to human health or safety or to the environment.

9 (c) Before the department gives notice of a proposal to adopt  
10 a regulation establishing alternative management standards  
11 pursuant to subdivision (a), and before the department adopts the  
12 regulation, the department shall evaluate the affected waste  
13 management activity and shall prepare, as required by paragraph  
14 (1) of subdivision (b), an analysis that addresses all of the  
15 following aspects of the activity, to the extent that the requirement  
16 or requirements for which alternative management standards will  
17 be established may affect these aspects of the activity:

18 (1) The types of waste streams and the estimated amounts of  
19 waste that are managed as part of the activity and the hazards to  
20 human health or safety or to the environment posed by reasonably  
21 foreseeable mismanagement of those wastes and their  
22 constituents. The estimate of the amounts of waste that are  
23 managed as part of the activity shall be based upon information  
24 reasonably available to the department.

25 (2) The complexity of the activity, and the amount and  
26 complexity of operator training, equipment installation and  
27 maintenance, and monitoring that are required to ensure that the  
28 activity is conducted in a manner that safely and effectively  
29 manages the particular waste stream.

30 (3) The chemical or physical hazards that are associated with  
31 the activity and the degree to which those hazards are similar to,  
32 or differ from, the chemical or physical hazards that are associated  
33 with the production processes that are carried out in the facilities  
34 that produce the waste that is managed as part of the activity.

35 (4) The types of accidents that might reasonably be foreseen to  
36 occur during the management of particular types of waste streams  
37 as part of the activity, the likely consequences of those accidents,  
38 and the actual reasonably available accident history associated  
39 with the activity.



1 (5) The types of locations at which the activity may be carried  
2 out, an estimate of the number of these locations, and the types of  
3 hazards that may be posed by proximity to the land uses described  
4 in subdivision (b) of Section 25232. The estimate of the number  
5 of locations at which the activity may be carried out shall be based  
6 upon information reasonably available to the department.

7 (d) The department may not give notice proposing the adoption  
8 of, and the department may not adopt, a regulation pursuant to  
9 subdivision (a) unless it first finds and demonstrates, using  
10 appropriate information, including the information developed in  
11 the analysis prepared pursuant to subdivision (c), all of the  
12 following conditions:

13 (1) One of the following applies:

14 (A) The waste is solely a non-RCRA hazardous waste or the  
15 waste or its management is exempt from, or is not otherwise  
16 regulated pursuant to, the federal act.

17 (B) The standard or standards in this chapter for which  
18 alternative standards would be established is or are not a  
19 requirement of the federal act, or the regulations adopted to  
20 implement the federal act.

21 (C) The waste meets the criteria in subparagraph (A) of  
22 paragraph (4) of subdivision (a).

23 (2) There are special characteristics or circumstances  
24 associated with the waste, the generating or other management  
25 activity, or the universe of persons that generate or manage the  
26 waste that make the alternative management standards to be  
27 adopted by regulation more appropriate than the corresponding  
28 standard or standards contained in this chapter.

29 (3) One of the following applies:

30 (A) The waste management activity, to which the alternative  
31 standards would apply, is not significant as a potential hazard to  
32 human health or safety or to the environment, when conducted in  
33 accordance with the conditions, limitations, and other  
34 requirements specified in the regulations adopted pursuant to  
35 subdivision (a).

36 (B) The standard or standards in this chapter for which  
37 alternative standards would be established are not significant in  
38 either of the following:



1 (i) Preventing or mitigating any potential hazard to human  
2 health or safety or to the environment posed by the activity subject  
3 to the alternative standards.

4 (ii) Ensuring that the activity is conducted in compliance with  
5 applicable requirements of this chapter and the regulations  
6 adopted pursuant to this chapter.

7 (C) The conditions, limitations, and other requirements  
8 specified in the regulations adopted pursuant to subdivision (a)  
9 accomplish the same purpose as the corresponding standard or  
10 standards in this chapter, but at less cost or greater administrative  
11 convenience and without increasing potential risks to human  
12 health or safety or the environment.

13 (4) Compliance with the alternative management standards, in  
14 lieu of the corresponding standard or standards in this chapter, is  
15 not likely to result in any of the following:

16 (A) A ~~significant~~ *significantly* reduced ability to track the  
17 waste or to ensure that the waste is properly disposed of.

18 (i) If the alternative management standards proposed by the  
19 department would allow for a deviation from the hazardous waste  
20 manifest requirements ~~—adopted pursuant to Section 25160~~  
21 *specified in this chapter*, the department shall include in the  
22 analysis prepared pursuant to subdivision (c) an explanation of  
23 how the proposed alternate tracking or recordkeeping system  
24 would ensure that the affected hazardous waste will be properly  
25 tracked and managed.

26 (ii) The requirement of clause (i) does not apply to a proposed  
27 alternative tracking or recordkeeping system ~~that applies as that~~  
28 *system would apply* to household hazardous waste, as defined in  
29 Section 25218.1.

30 (B) A significant increased potential for any of the following  
31 to occur:

32 (i) Release of *a* waste or its constituents to the environment.

33 (ii) Unauthorized persons or animals to come in contact with,  
34 or otherwise be exposed to, *a* waste or its constituents.

35 (iii) Mismanagement of the waste.

36 (e) The authority of the department to adopt regulations  
37 pursuant to this section shall remain in effect only until January 1,  
38 2007, unless a later enacted statute, which is enacted on or before  
39 January 1, 2007, deletes or extends that date. This subdivision does



1 not invalidate any regulation adopted pursuant to this section prior  
2 to January 1, 2007.

3 (f) *Nothing in this section may be construed to limit the*  
4 *authority or responsibility of the department to adopt regulations*  
5 *under any other provision of law.*

6 SEC. 2. Section 13173 of the Water Code is amended to read:

7 13173. “Designated waste” means either of the following:

8 (a) Hazardous waste that meets either of the following criteria:

9 (1) The hazardous waste has been granted a variance from  
10 hazardous waste management disposal requirements pursuant to  
11 Section 25143 of the Health and Safety Code.

12 (2) The hazardous waste is disposed of in other than a class 1  
13 hazardous waste disposal facility, in accordance with the  
14 regulations adopted by the Department of Toxic Substances  
15 Control pursuant to Section 25150.9 of the Health and Safety  
16 Code.

17 (b) Nonhazardous waste that consists of, or contains, pollutants  
18 that, under ambient environmental conditions at a waste  
19 management unit, could be released in concentrations exceeding  
20 applicable water quality objectives or that could reasonably be  
21 expected to affect beneficial uses of the waters of the state as  
22 contained in the appropriate state water quality control plan.

23 SEC. 3. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.